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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1467

ITT LAMP DIVISION OF THE INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION,
Petitioner

VS.

STEPHEN A. MINTER, COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE,
Respondent.

BRIEF OF THE STATE OF IOWA AS AMICUS CURIAE ON BEHALF OF PETITIONER FOR WRIT OF CERTORARI

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THE ATTORNEY GENERAL OF UTAH, VERNON B. ROMNEY, AND THE ATTORNEY GENERAL OF ARKANSAS, RAY THORNTON, JOIN IN IOWA'S BRIEF.

INTEREST OF THE STATE OF IOWA

A recent official opinion of the Attorney General of Iowa in construing the specific language of the Iowa statutes on general relief, soldier's relief and ADC held that while the children of strikers were entitled to ADC, the statutes did not provide welfare to the strikers.[1]

The interpretation of the Massachusetts general relief and ADC statutes by administrative regulation were differently interpreted.

[1] AGO 2/16/71 Appendix A

It appears that in addition to the construction of specific statutory language, there is an underlying fundamental legal proposition common to all welfare statutes, which would save a circuity of actions in Iowa and other states with similar problems, if the question raised in this case were determined by this court at this point in time.

THE ISSUES

A. Does Federal law prohibit states from granting welfare to employees while on strike either by administrative regulations or legislative enactments?

B. Did Congress intend to extend welfare grants to employees on strike pursuant to the Social Security Act which provides aid to dependent children?

BRIEF POINT I

THE UNITED STATES CONSTITUTION, ARTICLE VI, THE NATIONAL LABOR RELATIONS ACT, AND JUDICIAL DECISIONS OF THIS COURT INDICATE THAT STATES ARE PROHIBITED BY ADMINISTRATIVE REGULATIONS OR LEGISLATIVE ENACTMENTS FROM USING PUBLIC FUNDS TO INTERFERE WITH FREE BARGAINING RIGHTS.

Comment

The Congressional declaration of purpose and policy of the "Labor Management Relations Act, 1947" is stated as:

"(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

> "It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activites affect commerce, to define and proscribe (sic) practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."[2]

Of this Act, a contemporary commentator of the law has said:

> "The heart of the national labor policy is the private adjustment of conflicts of interest over wages, hours, and other conditions of employment, by the negotiation and administration of collective bargaining agreements between employers and the union designated as their representatives by a majority of the employees in appropriate bargaining units."[3]

In the field of labor relations, this court has always recognized that there is Federal supremacy over the states and that states may not enact any legislation which infringes upon the free collective bargaining rights guaranteed to the parties by the Federal Labor Relations Act. Except to prevent violence under the traditional power of the state to maintain the peace, the court has struck down state laws enacted without Congressional authority, which were inconsistent with the concept of Federal supremacy as fashioned by the Federal laws, policies and the courts.[4]

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[2]Title 29 U.S.C. Section 141.

[3]Cox, "Federalism in the Law of Labor Relations" (1954), '67 Harvard Law Review, 1297, 1318

[4]Table of Citations, P. ii Petition for Writ and p. A4 of opinion re: Violence

Congress, in the National Labor Relations Act, has specifically provided that states may pass laws in certain specific areas.[5] But, in the Act, it has never carved out an exception which would permit a state to interfere with the right of both the employer and the employee to bargain freely in their negotiations by financial participation in the form of public welfare funds to voluntary economic strikers.

When Massachusetts so interprets its state statutes to permit state interference, it not only is outside the expressed scope and purpose of the National Labor Relations Act, but it violates the very principles of free bargaining guaranteed to both the employer and employee.

It takes little imagination to realize that substituting welfare benefits for wages has the effect of interfering with the free bargaining rights between employees and employers.

BRIEF POINT II

CONGRESS DID NOT DESIGN THE SOCIAL SECURITY ACT TO PROVIDE ADC BENEFITS TO AN ADULT BREADWINNER WHO VOLUNTARILY LEAVES HIS EMPLOYMENT TO PARTICIPATE IN A STRIKE.

Comment

The thrust of the amendments in 1967 to the Social Security Act was to encourage those persons legally liable for the support of children to enter the labor force.[6] Each state plan was thereafter required to:

> "(15) provide -- (A) for the development of a program for each appropriate relative and dependent

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[5]Title 29 U.S.C. Section 164 (b)

[6]Title 42 U.S.C. Section 602 (a) (15) (A) (i)

> child receiving aid under the plan, and each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), with the objective of -- (i) assuring, to the maximum extent possible, that such relative, child, and individual will enter the labor force and accept employment so that they will become self-sufficient, . . . "

Under this amendment, the Secretary of HEW did not construe striking as an acceptable reason to refuse a bona fide offer of employment when writing regulations under Title 42, Section 607 "Dependent Children of Unemployed Fathers". In Regulation 233.100.[7] , only three factors were enumerated: (1) minimum wages, (2) physical ability to do the work, and (3) unsafe working conditions, including lack of workman's compensation protection.

Under the doctrine of statutory construction, the Latin phrase "expressio unius est exclusio alterius", participation in a labor strike is not sufficient reason to refuse a bona fide offer of employment and thus be qualified for AFDC benefits.

According to the Legislative History of the 1967 Amendments to the Social Security Act, the purpose was

> " . . . providing greater incentives for appropriate members of families drawing aid to families with dependent children (AFDC) payments to obtain employment so that they need no longer be dependent on the welfare rolls."[8]

This interpretation has also been passed upon in effect by this Court when in King v. Smith[9] AFDC benefits are reserved for needy children who have no breadwinner legally obligated to support them.

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[7] Appendix B Regulation Section 233.100 Title 45, Code of Federal Regulations, Chapter II, Section 233.100

[8] Appendix C, Legislative History of the 1967 Amendment to the Social Security Act, Pub. Law 90-248, 1967 U.S. Code Cong. and Adm. News, pp. 2834 and 2835

[9] King v. Smith
392 U.S. 309, 20 L.Ed 1118 at 1131 and 1132, 88 S.Ct. 2128

At page 1131, we read:

> "The AFDC program was designed to meet a need unmet by programs providing employment for breadwinners. . . . This group was composed of children in families without a 'breadwinner', 'wage earner', . . . "

And at page 1132, we read:

> "It is clear, as we have noted that Congress expected 'breadwinners' who secure employment would support their children . . . "

At page 567, this Court in Lewis v. Martin [10] (April 20, 1970) commented that the Congressional intent of the basic purpose of the Act was "providing aid to 'needy' children, except where there is a 'breadwinner' in the house who can be expected to provide such aid himself."

Had Congress intended that welfare should be granted to persons on strike from their employment, it would have so stated as it did in the amendment to the Food Stamp Act of 1964. [11]

In that amendment, Congress specifically provided that

> "refusal to work at a plant or site subject to a strike or a lockout for the duration of such strike or lockout shall not be deemed to be a refusal to accept employment",

Thus an "able-bodied adult person between the ages of eighteen and sixty-five", who goes on strike, may receive food stamps in that Federally-funded program, if otherwise eligible.

---

[10] Lewis v. Martin
397 U.S. 552, 25 L.Ed2d 561, at 567, 90 S.Ct. 1282

[11] Pub. Law 91-671, 91st Congress, HR 18582, January 11, 1971

CONCLUSION

The Federal labor laws protect employees and employers in their bargaining relations in the economic area.

The other Act (as well as local general relief laws) protects the rights of the needy persons, who, due to no fault of their own, are unable to be self-supporting by their own labors.

The 1967 amendments tc the Social Security Act is to encourage persons to become "breadwinners" not "welfare recipients". It is designed to provide support for needy children who have no "breadwinner", as stated by this court in King v. Smith. It has never been interpreted by this court as designed for those who have a "breadwinner" legally liable for the support of minor children, but who voluntarily leaves employment in an economic strike.

The level of subsistence of these needy children could suffer a sharp cutback during periods of strikes if this were the interpretation.

If Congress intended for this to happen, it would have so stated in explicit terms. Certainly it spoke explicitly in the amendment to the 1964 Food Stamp Act in providing food stamps to strikers.

We suggest that the legal questions in this cause are of such nation-wide concern to our economy and to the welfare of our needy unemployable persons that this court should give its attention to the problem.

Respectfully submitted,

RICHARD C. TURNER
Attorney General of the
State of Iowa

LORNA LAWHEAD WILLIAMS
Special Assistant Attorney
General of Iowa
Attorneys for State of
Iowa Amicus Curiae

APPENDIX A

WELFARE: Limitations on Public Assistance to Strikers —§§ 234.11, 239.3, 249C.6 and Ch. 252, Code of Iowa, 1971. Food stamps available, if otherwise eligible, pursuant to Federal Food Stamp Act; Iowa recognizes the food stamp program in § 234.11; no ADC available under §239.3, if neither parent is incapacitated and both live in home; the single parent not entitled to assistance under § 249C.6, but possible personal allowances available to child; a veteran on strike is not entitled to Soldiers Relief for the "indigent" under § 250.1; a person on strike is not a "poor person" under Ch. 252, pertaining to general county relief. (Williams to Chalupa, Jasper County Attorney, 2/16/71) #71-2-40

February 16, 1971

Dennis F. Chalupa, Esquire
Jasper County Attorney
301 Jasper County Courthouse
Newton, Iowa 50208

Dear Mr. Chalupa:

You have requested an Opinion of the Attorney General as to:

> "Whether or not persons would be eligible, depending on their particular circumstances, for food stamps, aid to dependent children, soldier's relief or general relief, if they have no wages due to the fact that they are on strike and receive only strike pay from their union."

DIVISION I—FOOD STAMPS

The Food Stamp Act of 1964 (P. L. 88-525, 78 Stat. 703), authorizes the U. S. Secretary of Agriculture to formulate and administer a Food Stamp Program for the purpose of encouraging the increased utilization of the nation's abundance of food by raising levels of nutrition among low-income households. (Regulations were published December 30, 1970 in Vol. 35, Federal Register No. 252.) The Food Stamp Program is financed solely by the Federal Government with no state or local funds involved, and, although administered by the Iowa Department of Social Services and County Welfare Boards, it is regulated by the Federal Government. Iowa has recognized the program (§ 234.11, Code of Iowa, 1971), but has enacted no laws regulating it.

Pursuant to the above-cited federal regulations, the Iowa Department of Social Services establishes the income and resource eligibility limitations with approval of the U. S. Secretary of Agriculture. Persons, whether on strike or not, having income or resources in excess of these standards, are not eligible to receive food stamps; and when they apply or reapply for food stamps, the income which they received for the 30-day period prior to their application or reapplication is considered in making the determination for eligibility, including wages or striker's pay.

However, persons who meet the income and resources eligibility requirements and are on strike, may be certified to participate in the federal food stamp program.

DIVISION II—ADC ASSISTANCE

This program is designed to aid families with needy children where there is only one parent in the home or where there is an incapacitated father under the Federal

Social Security Act, Title 42 U. S. C., 602-644 and Chapter 239, 1971 Code of Iowa. Section 239.3, 1971 Code of Iowa defines a "dependent child" as:

> ". . . a needy child under the age of 16 or under the age of 21 and a student . . . who has been deprived of parental support and care by reason of death, continued absence from home, physical or mental incapacity, or unfitness of either parent . . ."

Therefore, if the child is living in the home where both the mother and father are residing, unless one is incapacitated, he is not eligible to receive ADC.

In the case of a single parent who is participating in a strike, that parent is disqualified from having access to and ADC funds. Section 249C.6, 1971 Code of Iowa, reads as follows:

> "Participation required. Each eligible person shall . . . accept any reasonably suitable employment . . . as a condition of receiving public assistance. If he fails or refuses to do so, he shall not receive public assistance. His disqualification shall not disqualify other members of his family who are entitled to public assistance, but their public assistance shall not be paid to the disqualified person and shall be paid in a manner which will not permit the disqualified person to have access to the assistance fund."

A person who goes on strike cannot be deemed to be cooperating or accepting reasonably suitable employment, and thus becomes ineligible to receive ADC payments. The portion of ADC payments which are paid solely for the children in the ordinary case where the parent is eligible must be paid to a guardian, duly appointed as provided by § 239.5, Code of Iowa, 1971.

DIVISION III—SOLDIERS RELIEF

The funds for Soldiers Relief are derived from county tax levies pursuant to Chapter 250, 1971 Code of Iowa, and this relief is jointly granted by the Board of Supervisors and the Soldiers Relief Commission for the purposes stated therein. Section 1, Chapter 250 provides that the fund shall be used:

> ". . . for the relief of and to pay the funeral expenses of honorably discharged, indigent men and women of the United States who served in the military or naval forces."

The word "indigent" as used in this chapter has been defined in two Attorney General's Opinions as follows:

1932 OAG, at page 164, reads in part:

> ". . . the term 'indigent' is used to refer to one's financial ability and ordinarily indicates one who is destitute of means of comfortable subsistence so as to be in want."

OAG 1919-1920 at page 702 reads in part:

> ". . . a person is indigent when they are not possessed of sufficient funds to comfortably provide for themselves . . .
>
> "Public funds should not be expended in assisting those who are able to care for themselves."

A person who could work at his job, but goes on strike, cannot be deemed indigent or expect the public to support him and his strike.

DIVISION IV—GENERAL RELIEF

General County Relief is granted pursuant to the provisions of Chapter 252, 1971 Code of Iowa, to persons defined as "poor". Section 252.1 defines a "poor person" as follows:

> "those who are unable because of physical or mental disability to earn a living by labor."

Persons on strike are not necessarily "poor", and they are not on strike because of physical or mental disability which prevents them from earning a living, but rather because they seek a better living. County General Relief is restricted to those who are unable, because of a physical or mental disability, to earn a living.

Respectfully submitted,

/s/ LORNA L. WILLIAMS,
Lorna L. Williams,
Special Assistant Attorney General

LLW:e

APPENDIX B

Excerpts from Title 45, Code of Federal Regulations Chapter II Section 233.100 (p. 571):

"Section 233.100 Dependent children of unemployed fathers.

"(a) Requirements for State Plans. If a State wishes to provide AFDC for children of unemployed fathers, the State plan . . . must . . .

"(3) Provide for payment of aid . . . when the conditions set forth in subdivisions (ii) are met . . .

"(ii) Such father has not without good cause, . . . refused a bona fide offer of employment . . . "

Questions with respect to the following factors must be resolved:

"(a) That there was a definite offer of employment at wages meeting any applicable minimum wage requirements and which are customary for such work in the community;

"(b) Any questions as to the father's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

"(c) Any questions of working conditions, such as risks to health, safety, or lack of workman's compensation protection."

APPENDIX C

LEGISLATIVE HISTORY OF THE 1967 Amendments to the Social Security Act.

Excerpts from 1967 US Code Cong. and Adm. News.

(A) On pages 2834 and 2835, we read:

> " . . . providing greater incentives for appropriate members of families drawing aid to families with dependent children (AFDC) payments to obtain employment so that they need no longer be dependent on the welfare rolls."

(B) On page 2837 we read:

> " . . . (1) For the purpose of providing greater incentives for appropriate members of families drawing aid to families with dependent children (AFDC) payments to obtain employment so that they need no longer be dependent on the welfare rolls the bill would -- . . . "

(C) On page 2860 we read:

> "An important facet of this suggested work program is that in most instances the recipient would no longer receive a check from the welfare agency. Instead, he would receive a payment from an employer for services performed. The entire check would be subject to income, social security, and unemployment compensation taxes, thus assuring that the individual would be accruing rights and responsibilities as he would in regular employment . . . "
>
> "A refusal to accept work or undertake training without good cause by a person who has been referred would be reported back to the State agency by the Labor Department; and, unless such person returns to the program within 60 days (during which he would receive counseling), his welfare payment would be terminated. Protective and vendor payments would be provided to protect dependent children from the faults of others . . . "